

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**ELITE FUEL FOUR, INC.,
IOWA GAS GROUP, INC.,
LIBERTY MART INC., AND
ISH OBEROI, INDIVIDUALLY**

**ADMINISTRATIVE ORDER
NO. 2010-UT- 18**

**UST NO. 198608190
821 E. Euclid Ave., Des Moines**

**To: Ish Oberoi
9 Elk Run Rd.
Waterloo, IA 50703**

**Elite Fuel Four, Inc.
Reg. Agent, Ish Oberoi
9 Elk Run Rd.
Waterloo, IA 50703**

**Iowa Gas Group, Inc.
Reg. Agent, Shital N. Mehta
438 New York Lane
Elk Grove Village, IL 60007**

**Liberty Mart Inc.
Reg. Agent, Farrukh Pasha
2919 E 14TH ST
Des Moines, IA 50316**

I. SUMMARY

This administrative order (Order) requires each of the above-listed parties to pay an administrative penalty as described in Division V below within 30 days of receipt of this Order unless the Order is appealed as provided in Division VII below. The penalty is assessed for violations of underground storage tank (UST) regulations at the referenced facility.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

**Paul Nelson, Environmental Specialist
Iowa Department of Natural Resources
502 E 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/281-8779**

Relating to legal issues:

**Tamara Mullen, Attorney
Iowa Department of Natural Resources
502 E 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/281-8934**

II. JURISDICTION

This Order is issued pursuant to Iowa Code sections 455B.474(1)(f)(11) and 455B.476, which authorize the Director of the Iowa Department of Natural Resources (Department) to issue any order necessary to secure compliance with Iowa Code Chapter 455B, Division IV, Part 8 and Department rules contained in Chapter 567 Iowa Administrative Code (I.A.C.) 135. Additionally, Iowa Code section 455B.109 and administrative rules in 567 I.A.C. Chapter 10 authorize the Director to assess administrative penalties up to \$10,000.

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III. STATEMENT OF FACTS

1. Elite Fuel Four, Inc. (EF4) is an Illinois corporation registered with the Iowa Secretary of State and doing business in Iowa. Mr. Ish Oberoi is the registered agent for EF4, is the President of EF 4, and upon information and belief, is a principal stockholder in EF 4.
2. EF4 currently owns the UST site at 821 E. Euclid Avenue in Des Moines, IA. It purchased this site on December 12, 2007 from Iowa Gas Group, Inc., (Iowa Gas) an Illinois corporation that has never registered in Iowa. Iowa Gas owned this parcel for exactly one month, having bought it from Krause Gentle Corporation (fictitious name Kum & Go) on November 28, 2007.
3. There are two petroleum USTs registered at this site, an 8,000 gallon tank and a 10,000 gallon tank, both installed in 1989.
4. Mr. Paul Ghuman as the authorized representative of Iowa Gas registered with the Department as the owner of two petroleum USTs at this location on November 27, 2007, which is the same day the sale of the parcel went through transferring ownership from Krause Gentle Corporation to Iowa Gas. Mr. Ghuman is president of Iowa Gas and upon information and belief a principal stockholder.
5. Iowa Gas sold the property to EF4 one month later, on December 28, 2007. EF4 never registered with the Department as the new owner and operator. Yet, upon information and belief, at all times relevant to this Order, Mr. Ish Oberoi of EF 4 has been the person in control of, or having responsibility for, the daily operation of the USTs at this location. He has been the primary contact person responsible for maintain compliance with the regulatory requirements as stated in this Order.
6. An UST insurance company, Petroleum Mutual Marketers Insurance Cooperative (PMMIC), issued insurance for this property to "Iowa Gas Group, Inc." with effective dates of July 27, 2007 to July 26, 2008. At some point in 2008, this policy was transferred to "Elite Fuel" with Mr. Oberoi as an "additional insured."
7. In March 2008 the Department received the annual tank management fee for this site and the form listed "Iowa Gas Group, Inc." as the current owner of both the property and the tanks with no other party listed as a leasor or operator. However, at this time and since December 2007, EF4 has owned the property.
8. Department Field Office (FO) 5's Janet Gastineau conducted a site visit on April 23, 2008 and documented the following deficiencies: failure to provide records of tank release detection for the last 12 months, failure to provide records of line leak detection for the last 12 months, failure to provide the annual test of the operation of the mechanical line leak detectors, failure to have containment sumps, and failure to have adequate cathodic protection.

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9. The results of the inspection and a Notice of Violation (NOV) were sent to Mr. Oberoi on May 13, 2008 with proof of corrective action on the noted deficiencies required by June 23, 2008.
10. Mr. Bill Gibbons, of FO5, revisited the site to investigate complaints that customers were getting water in their fuel tanks after filling up with gas at the station. Mr. Gibbons checked both tanks with an oil/water surface probe and found .20 feet of water in one tank and no water in the other. Mr. Gibbons noticed both tanks' spill buckets were badly rusted.
11. On June 5, 2008 Mr. Jim Stricker, FO 5 Supervisor, followed-up this second site visit with a letter requiring the spill buckets be replaced by June 30, 2008 and reiterated that all records originally required by Ms. Gastineau be submitted by June 23, 2008.
12. In August 2008 the Department received notice from PMMIC that the insurance policy had expired.
13. The Department sent a letter to Mr. Ghuman of Iowa Gas on August 29, 2008 noting the cancellation, and reminding Mr. Ghuman of the requirement to maintain insurance, and to immediately stop accepting or dispensing fuel until replacement insurance had been obtained.
14. On October 2, 2008, Mr. Bill Gibbons of FO 5 returned to the site to verify if the station was still operating in violation of the rule requiring insurance. Mr. Gibbons noticed the gas nozzles were bagged off and no gas was being sold. However, the convenience store was open. Mr. Gibbons removed both tanks' annual registration tags and observed that both spill buckets were still badly rusted.
15. Mr. Oberoi hired Tanknology to conduct tank/line tightness and leak detection tests at the site on October 17, 2008 and the following conditions were identified in Tanknology's report: the regular tank failed its test due to an ullage ingress. It was recommended that the tank be uncovered, the vent line be isolated, and retested. The regular line passed its test. The super tank, its line, and its leak detector could not be tested because there was too much water in the tank. The siphon checks had corroded away and may be the possible source of the ingress of water.
16. There is no record of a follow-up inspection or testing as recommended by Tanknology.
17. On a random drive-by, Ms. Gastineau verified the store and gas dispensers were closed and non-operational on December 21, 2008.
18. Liberty Mart Inc. registered as the new tank owner and operator with the Department in March 2009 and listed "Elite Fuel" as the previous owner. Mr. Farrukh Pasha listed himself as Liberty Mart Inc.'s authorized representative. Upon information and belief, Liberty Mart Inc. is an Iowa registered company and Mr. Pasha is both the president and treasurer, and is one of two shareholders.

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19. At all times relevant to this Order, including when Liberty Mart Inc. registered with the Department as the new owner and operator, EF4 maintained ownership of the property.
20. Liberty Mart Inc. also obtained insurance from Zurich with an effective date of January 27, 2009 to January 26, 2010. However, this policy was cancelled mid-term in August 2009 and has not been replaced.
21. FO5 supervisor Mr. Jim Stricker sent Mr. Pasha of Liberty Mart Inc., a letter on June 2, 2009 noting Mr. Pasha's new ownership of the site and reiterating previous requests: that records of the tank operations and line leak detections be sent to the Department for review, that the spill buckets be replaced, and proof of adequate cathodic protection be provided.
22. On July 23, 2009 Mr. Gibbons and Mr. Seth Anderson of FO5 visited the site and performed an inspection. The tanks still contained fuel and the spill buckets had water in them, but no gas was being sold and the convenience store was closed.
23. On July 29, 2009 the Department sent a NOV to Mr. Pasha for failure to notify the Department of temporary closure (from April 2009), failure to conduct a tank leak detection test, and failure to maintain financial responsibility.
24. Mr. Oberoi came into the Department's Central Office on August 31, 2009 to visit Mr. Paul Nelson of the Department's UST Section. He stated he planned to remove both tanks at the site using UST Fund tank removal monies. Mr. Nelson gave him tank closure notification forms and tank removal guidance.
25. On December 1, 2009, Mr. Gibbons inspected the site and his observations were identical to those from July 23, 2009: while the store was closed, both tanks still contained fuel and the spill buckets contained water.
26. On December 21, 2009 a NOV (the third this site has received since 2008) was sent to Mr. Pasha for improper temporary closure and failure to submit records; proper documentation was to be filed with FO 5 by January 22, 2010.
27. The Department never received a third-party compliance inspection for this site, due no later than December 31, 2009.
28. On January 5, 2010 Mr. Gibbons confirmed the site was still entirely closed for business.
29. To date, temporary closure documentation, tank operation records, line leak detection records, and a third-party compliance inspection report have not been submitted to the Department. The site is currently without financial responsibility. As such, a referral was given to the Department's Legal Services Bureau on January 10, 2010.

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IV. CONCLUSIONS OF LAW

1. Iowa Code Chapter 455B, Division IV, Part 8 (sections 455B.471-455B.479) establishes the UST program. Section 455B.472 declares that the release of regulated substances, including petroleum products, from USTs constitutes a threat to the public health and safety and to the natural resources of the state. Iowa Code section 455B.474 authorizes the Environmental Protection Commission (Commission) to adopt rules related to release detection and prevention, financial responsibility, tank closure, site assessment, risk classification, and corrective action applicable to all owners and operators of USTs. The Commission has adopted such rules in 567 I.A.C. Chapters 135 and 136. The Director of the Department may order any responsible UST owner or operator to take all corrective action consistent with Commission rules. See Iowa Code section 455B.474(1)(f)(11).

OWNER LIABILITY

2. Iowa Code section 455B.471(6) defines "owner" of USTs. Iowa Gas acquired this property in November 2007 and registered with the Department as the tank owner and operator that same month. EF4 bought the site from Iowa Gas in December 2007 but never changed registration with the Department. Liberty Mart Inc. registered with the Department as the current tank owner and operator in March 2009, yet EF4 remained the property owner. A PMMIC insurance policy from June 2007 through July 2008 named Iowa Gas then EF4 as the primary beneficiary, with Mr. Oberoi of Iowa Gas as a secondary beneficiary. As such, the Department is holding EF4 and Iowa Gas both liable as tank owners.

OPERATOR LIABILITY

3. Iowa Code section 455B.471(5) defines an "operator" of USTs as "a person in control of, or having responsibility for, the daily operation of the underground storage tank." EF4 has been the sole owner of the property since December 2007 and was the owner of a PMMIC insurance policy until it expired in 2008. However, Iowa Gas was listed as the operator until March 2009, at which time Liberty Mart Inc. was registered as the operator, and also acquired an insurance policy with Zurich. Mr. Ish Oberoi in his capacity as president of EF4 was the primary person having control of the daily operation and regulatory compliance of the UST system. Therefore, the Department is holding EF4, Iowa Gas, Mr. Ish Oberoi, and Liberty Mart Inc. as liable operators.

FINANCIAL RESPONSIBILITY

4. Owners and operators of USTs must maintain an approved financial assurance mechanism continuously until the tanks are permanently closed. 567 I.A.C. 136.22. Upon cancellation of UST insurance the named insured has six months in which to file a claim under the policy or the claim may be denied. See 567 I.A.C. 136.18.

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5. All owners and operators are required to maintain records documenting proof of an approved form of financial responsibility. See 567 I.A.C. 136.20. They must submit such proof to the Department upon request. 567 I.A.C. 136.19.
6. The above-stated facts show that the PMMIC insurance held by Iowa Gas and then transferred to EF4 expired in August 2008 and was not replaced until January 2009, five months later. The replacement insurance, acquired by Liberty Mart Inc. from Zurich, was cancelled in August 2009, eleven months ago. In totality, the site has been without a financial mechanism for a total of sixteen months.

RELEASE RECORD KEEPING

7. Owners and operators must maintain the following information pursuant to 567 I.A.C. 135.4(5)(b): a corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used; documentation of operation of corrosion protection equipment, documentation of UST system repairs, recent compliance with release detection requirements, and results of the site investigation conducted as permanent closure. Such records shall be kept at the UST site and be immediately available for inspection by the Department or be at a readily available alternative site and be provided for inspection to the Department upon request. See id at (c).
8. The above-stated facts show both tank and line release detection records were not maintained as required by 567 I.A.C. 135.4 or provided to the Department upon request.

TANK FEES

9. Owners and operators are required to pay a tank registration fee of \$10 on all USTs that are required by law to be registered. See Iowa Code section 455B.473(5).
10. Owners and operators are required to pay an annual tank management fee of \$65 per tank on all tanks larger than 1,100 gallons. Iowa Code section 455B.479. Department rules at 567 I.A.C. 135.3(5) require payment of the annual \$65 tank management fee by January 15 of each year. Upon payment, an annual tank tag is issued for the period April 1 to March 31. The Department may withhold issuance of a tank tag for nonpayment of fees or failure to provide proof of financial responsibility. See Iowa Code section 455B.473(9). It is illegal to accept or deliver fuel into tanks that have not been issued and do not display tank tags. Id at (8).
11. Iowa Code section 455B.473(8) provides that owners and operators shall pay a \$250 late fee per tank for failure to obtain annual tank tags. Imposition of a late fee does not preclude the assessment of an administrative penalty under Iowa Code section 455B.476.
12. The Department did not receive tank management fees for the two registered tanks at this site in either 2009 or 2010.

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THIRD-PARTY COMPLIANCE INSPECTION

13. Pursuant to 567 I.A.C. 135.20(1), owners and operators are required to retain a Department-certified compliance inspector and conduct a compliance inspection by December 31, 2007. Another compliance inspection must then be completed within the two-year period from January 1, 2008 to December 31, 2009 with at least a six month separation between the prior compliance inspections. After the biennial inspection for the period of 2008-2009, all subsequent inspections must be completed within 24 months of the prior inspection, with a minimum separation of six months.
14. The above-stated facts show that EF4, Iowa Gas, and Liberty Mart Inc. were all owners and/or operators during the 2008-2009 period and failed to complete a third-party compliance inspection in violation of 567 I.A.C. 135.20(1).

SPILL PREVENTION

15. Owners and operators of USTs are required to prevent spilling and overfilling to the maximum extent possible by utilizing spill and overfill prevention equipment, such as a spill containment basin. See 567 I.A.C. 135.3(1)"c".

TEMPORARY & PERMAMENT CLOSURE

16. When USTs are taken out of service for three months, the tanks must be temporarily closed in accordance with 567 I.A.C. 135.15(1) and a certification of temporary closure form submitted to the Department. All fuel from the tank must be removed to a de minimums amount (around 1 inch) and all fill pipes and vents must be secured. Id.
17. The rules governing the permanent closure of USTs are found in 567 I.A.C. 135.15(2). Pursuant to those rules, any UST that is temporarily closed for more than twelve months must be permanently closed either by removal or filling in place with an inert material *unless* the tank meets the system performance and upgrade standards in 567 I.A.C. 135.3(1) and (2). During permanent closure, owners and operators of the USTs are required to conduct a site closure investigation, including soil and water sample analysis, to determine if a release of a regulated system has occurred. 567 I.A.C. 135.15(3). A closure report must be submitted to the Department within forty-five days of tank closure. Id. at 135.15(3)"e". An owner or operator must give the Department at least thirty days notice of its intent to close the USTs. Id. at 135.15(12).
18. The above-stated facts show that these tanks have been closed and inactive since at least April 2009 without complying with the temporary closure rules. Additionally, since the tanks have been closed for more than twelve months (to date, 14 months), EF4, Iowa Gas, and Liberty Mart Inc. are in violation of 567 I.A.C. 135.15 which requires either reactivation if the tanks meet the upgrade standards or permanent closure.

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V. ORDER

THEREFORE, the following are ordered to comply with the following provisions in order to redress these violations:

1. EF4 or Iowa Gas shall immediately empty all product from these USTs and submit to the Department a certification of temporary closure form and remove all liquids from the spill buckets within 14 days of receipt of this Order.
2. EF4, Iowa Gas, and Liberty Mart Inc. are jointly and severally liable for delinquent tank management fees for 2009 and 2010, including late fees of \$1,260, calculated as $(2 \times (65 \times 2) + 2(\$250 \times 2))$. Payment shall be made no later than 30 days after receipt of this Order, paid to the "Iowa Department of Natural Resources." All checks must be accompanied by a cover letter identifying the UST Registration Number and this Order by name and number as provided in the caption.
3. Within 14 days of receipt of this Order, EF4 or Iowa Gas shall submit acceptable proof that the USTs are covered by an approved form of financial responsibility in accordance with 567 I.A.C. Chapter 136. If EF4 or Iowa Gas fail or are unable to obtain financial responsibility coverage by July 5, 2010, they must retain a certified groundwater professional and complete a site check in accordance with 567 I.A.C. 135.6 and submit a report to the Department.
4. Within 14 days of receipt of this Order, EF4 or Iowa Gas shall retain a Department certified compliance inspector and complete an initial inspection no later than July 5, 2010 and complete all corrective actions within 60 days or an earlier date if required by Department rules.
5. All named parties are jointly and severally responsible to pay an administrative penalty of \$4,000. Additionally, EF4, Iowa Gas, and Mr. Oberoi are jointly and severally responsible for an administrative penalty of \$4,688. Finally, EF4 and Iowa Gas are jointly and severally responsible to pay \$1,312 representing economic benefit described in Division VI. All payments shall be by check payable to the "Iowa Department of Natural Resources" within 30 days of receipt of this Order unless the Order is appealed as provided in Division VII below. All checks must be accompanied by a cover letter identifying this Order by name and number as provided in the caption.

VI. PENALTY

Iowa Code section 455B.477 authorizes the assessment of civil penalties of up to \$5,000 per day of violation for violation of the type cited in this Order.

Iowa Code section 455B.109 authorizes the assessment of administrative penalties up to \$10,000 for violations of Iowa Code Chapter 455B or rules, permits, and orders promulgated or issued pursuant to Chapter 455B. Additionally, 567 I.A.C. Chapter 10 was adopted by the

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Commission to implement this provision. Pursuant to rule 567 I.A.C. 10.2, the Department has determined that a penalty should be assessed. The administrative penalty is determined as follows. The Department reserves the right to reassess the penalty rationale if on appeal, additional information warrants a modification.

ECONOMIC BENEFIT: Avoided costs include the cost of maintaining continuous insurance, as the facts above show lapses between August 2008 and January 2009 (5 months) and August 2009 to date (11 months), for a total lapse of 16 months. Insurance is estimated to be \$500 per tank for the year, or roughly \$41 per tank per month. For two tanks to be uninsured for sixteen months, therefore, is roughly \$1,312. EF4 and Iowa Gas, as joint tank owners, are responsible for ensuring financial responsibility exists. Therefore, \$1,312 is assessed jointly and severally against EF4 and Iowa Gas. Additionally, the cost of a compliance inspection is about \$600. Assuming the parties comply with this order, the economic benefit is represented by the interest earned on the cost of compliance over the period of delayed compliance. The Department is reserving the right to assess for this.

GRAVITY: The violations present at this site include operating without financial responsibility, failure to maintain continuous financial responsibility, failure to temporarily close the UST system, and failure to submit records. Maintaining continuous financial responsibility coverage on UST systems is one of the most important regulatory requirements as it guarantees funds exist to clean up the environment, and protect individuals and their property, should a release of a regulated substance take place. EF4 and Iowa Gas allowed this site to be without insurance for at least 16 months. Failure to complete a third-party compliance inspection is also a major violation of the UST operation and leak prevention regulatory scheme. Likewise, not maintaining leak detection records and having them available for Department review undermines the purpose of this regulation, which is to keep track fuel levels to quickly catch a release from the system. For this factor, \$2,000 is assessed jointly and severally against EF4, Iowa Gas, Mr. Oberoi, and Liberty Mart Inc. for their failure to conduct a third-party compliance inspection. Additionally, \$2,344 is assessed jointly and severally against EF4, Iowa Gas, and Mr. Oberoi for operating without financial responsibility, failure to maintain continuous financial responsibility, failure to temporarily close the UST system, and failure to submit records.

CULPABILITY: EF4, Iowa Gas, and Mr. Oberoi own and operate numerous UST facilities in Iowa and other states, and know or should know what is required by UST regulations. Moreover, the Department sent numerous letters to the named parties and conducted site visits, following those visits with clear guidance on compliance actions. Therefore, \$2,000 is assessed jointly and severally against EF4, Iowa Gas, Mr. Oberoi, and Liberty Mart Inc. for their failure to conduct third-party compliance inspections. Additionally, \$2,344 is assessed jointly and severally against EF4, Iowa Gas, and Mr. Oberoi for operating without financial responsibility, failure to maintain continuous financial responsibility, failure to temporarily close the UST system, and failure to submit records.


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VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.476, and Chapter 567 I.A.C. 7 which adopts by reference Chapter 561 I.A.C. 7, the named parties may file a written Notice of Appeal to the Commission within 30 days of receipt of this Order. The party should file this Notice of Appeal with the Director of the Department, and must identify the specific portion or portions of this Order it wishes to appeal. The party must also include a short and plain statement of the reasons for appeal. A contested case hearing will then commence pursuant to Iowa Code Chapter 17A and 561 I.A.C. Chapter 7.

VIII. NONCOMPLIANCE

Failure to comply with this Order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code § 455B.477. The Department reserves the right to request that the Attorney General initiate legal action based on the violation alleged in this Order, as well as any subsequent violations in the event the party violates the Order, including failure to timely pay any penalty.

 Dated this 23 day of June, 2010
Richard A. Leopold, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Elite Fuel Four, Inc. et al: Field Office 5, Janet Gastineau, Bill Gross, Elaine Douskey, V.I;
V.L